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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/902,992	07/11/2001	Linda L. Roman	050320-1020	1921
24504	7590	01/20/2006	EXAMINER	
THOMAS, KAYDEN, HORSTEMEYER & RISLEY, LLP 100 GALLERIA PARKWAY, NW STE 1750 ATLANTA, GA 30339-5948			FRENEL, VANEL	
			ART UNIT	PAPER NUMBER
			3626	

DATE MAILED: 01/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/902,992	<b>Applicant(s)</b> ROMAN ET AL.	
	<b>Examiner</b> Vanel Frenel	<b>Art Unit</b> 3626	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 11 July 2001.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>01222002</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### Notice to Applicant

1. This communication is in response to the Application filed on 07/11/01. Claims 1-26 are pending.

### ***Claim Rejections - 35 USC § 101***

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 1-6, 8-9, 11-17, 19-23 and 25-26 are rejected under 35 U.S.C 101 because the claimed invention is directed to non-statutory subject matter.

The basis of this rejection is set forth in a two-prong test of:

- (1) whether the invention is within the technological arts; and
- (2) whether the invention produces a useful, concrete, and tangible result.

For a claimed invention to be statutory, the claimed invention must be within the technological arts. Mere ideas in the abstract (i.e., abstract idea, law of nature, natural phenomena) that do not apply, involve, use, or advance the technological arts fail to promote the "progress of science and the useful arts" (i.e., the physical sciences as opposed to social sciences, for example) and therefore are found to be non-statutory subject matter. For a process claim to pass muster, the recited process must somehow apply, involve, use, or advance the technological arts.

In the present case, claims 1-6, 8-9, 11-17, 19-23 and 25-26 only recite an abstract idea. The recited steps of developing a medical template, wherein said

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medical template comprises at least one medical protocol that is focused toward addressing a specific attribute of a medical ailment does not apply, involve, use, or advance the technological arts since all of the recited steps can be performed in the mind of the user or by use of a pencil and paper. These steps only constitute an idea of customizing said medical template to develop said patient care plan.

Additionally, for a claimed invention to be statutory, the claimed invention must produce a useful, concrete, and tangible result. In the present case, the claimed invention produces customizing said medical template to develop said patient care plan (i.e., repeatable) used in focusing on addressing said medical ailment to improve the health of said patient (i.e., useful, and tangible).

Although the recited process produces a useful, concrete, and tangible result, since the claimed invention, as a whole, is not within the technological arts as explained above, claims 1-6, 8-9, 11-17, 19-23 and 25-26 are deemed to be directed to non-statutory subject matter.

In order for a claim to be statutory, the claimed invention must produce a useful, concrete, and tangible result and having "a computer system" or "a computer-medium" tied with the body of the claim in performing the recited steps.

As such, claims 1-6, 8-9, 11-17, 19-23 and 25-26 do not recite any application or use of the technological arts, and thus equally rejected under 35 U.S.C.101.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bardy (6,203,495) in view of (E-Rx for better records Health care: Physician Weblink lets doctors put patient information online by PENNI CRABTREE; Orange County Register. Santa Ana, Calif.: Apr. 22, 2000; pg.01).

(A) As per claim 1, Bardy discloses a method for developing a medical template, wherein said medical template comprises at least one medical protocol that is focused toward addressing a specific attribute of a medical ailment (See Bardy, Col.2, lines 10-55; Col.6, lines 14-25);

customizing said medical template to develop said patient care plan (See Bardy, Col.10, lines 57-67 to Col.11, line 33).

Bardy does not explicitly disclose that the method having providing patient care to assist in improving health of said patient, and

wherein said patient care plan is focused on addressing said medical ailment to improve the health of said patient.

However, these features are known in the art, as evidenced by PENNI CRABTREE. In particular, PENNI CRABTREE suggests that the method having providing patient care to assist in improving health of said patient, and

wherein said patient care plan is focused on addressing said medical ailment to improve the health of said patient (See PENNI CRABTREE, Page 1, Paragraphs 1-5).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have included the features of PENNI CRABTREE within the system of Bardy with the motivation of embracing a new computerized patient-record system that allows him to conduct a patient examination, chart an ailment, record a diagnosis and write a prescription- all on a hand-held, mobile computer the size of a clipboard (See PENNI CRABTREE, Page 1, Paragraph 1).

(B) As per claim 2, Bardy discloses the method wherein said step of customizing said medical template, further comprises the steps of:

gathering medical information regarding said patient (See Bardy, Col.5, lines 54-64); and

conforming said medical template in accordance with said medical information regarding said patient (SeeBardy, Col.5, lines 54-64).

(C) As per claim 3, Bardy discloses the method further comprising the step of periodically performing customization of said patient care plan as a result of receiving updated medical information regarding said patient (See Bardy, Col.12, lines 1-52).

(D) As per claim 4, PENNI CRABTREE discloses the method wherein said medical template is a standard of care used to address said medical ailment (See PENNI CRABTREE, Page 1, Paragraphs 1-5).

The motivation for combining the respective teachings of Bardy and PENNI CRABTREE are as discussed above in the rejection of claim 1, and incorporated herein.

(E) As per claim 5, PENNI CRABTREE discloses the method wherein said patient care plan further comprises, a series of medical activities to be performed to assist in treating said ailment, and a number of medical visits to be taken by said patient, with a medical professional (See PENNI CRABTREE, Page 1, Paragraph 1-5).

The motivation for combining the respective teachings of Bardy and PENNI CRABTREE are as discussed above in the rejection of claim 1, and incorporated herein.

(F) As per claim 6, PENNI CRABTREE discloses the method wherein said medical visits are performed by said patient communicating with said medical professional via a communication channel such that said patient is located distant from said medical professional during said medical visit (See PENNI CRABTREE, Page 2, Paragraphs 2-9).

The motivation for combining the respective teachings of Bardy and PENNI CRABTREE are as discussed above in the rejection of claim 1, and incorporated herein.

(G) As per claim 7, Brady discloses the method wherein said communication means is the Internet (See Brady, Col.6, lines 38-50).

(H) As per claim 8, PENNI CRABTREE discloses the method wherein said patient care plan comprises a series of interventions, wherein said interventions comprise activities that a medical professional will perform to assist said patient in achieving a predetermined medical goal (See PENNI CRABTREE, Page 2, Paragraphs 1-15).

The motivation for combining the respective teachings of Brady and PENNI CRABTREE are as discussed above in the rejection of claim 1, and incorporated herein.

(I) As per claim 9, PENNI CRABTREE discloses the method wherein each of said interventions is scored in accordance with a predefined scale such that patient progress toward said predetermined medical goal may be monitored and adjusted by further customizing said patient care plan (See PENNI CRABTREE, Page 3, Paragraphs 2-16).

The motivation for combining the respective teachings of Brady and PENNI CRABTREE are as discussed above in the rejection of claim 1, and incorporated herein.

(J) As per claim 10, Brady discloses a first computer comprising (See Brady, Col.7, lines 6-24);

a transceiver (See Brady, Col.8, lines 36-49);

software stored within said first computer defining functions to be performed (See Brady, Col.8, lines 10-35); and



a processor configured by said software to perform the steps of,  
developing a medical template, wherein said medical template comprises  
at least one medical protocol that is focused toward addressing a specific attribute of a  
medical ailment (See Bardy, Col.2, lines 10-55; Col.6, lines 14-25);

customizing said medical template to develop said patient care plan (See Bardy,  
Col.10, lines 57-67 to Col.11, line 33).

Bardy does not explicitly disclose that the system having providing a patient care  
plan to assist in improving health of a patient and

wherein said patient care plan is focused on addressing said medical ailment to  
improve the health of said patient.

However, these features are known in the art, as evidenced by PENNI  
CRABTREE. In particular, PENNI CRABTREE suggests that the method having  
providing patient care to assist in improving health of said patient, and

wherein said patient care plan is focused on addressing said medical ailment to  
improve the health of said patient (See PENNI CRABTREE, Page 1, Paragraphs 1-5).

It would have been obvious to one of ordinary skill in the art at the time of the  
invention to have included the features of PENNI CRABTREE within the system of  
Bardy with the motivation of embracing a new computerized patient-record system that  
allows him to conduct a patient examination, chart an ailment, record a diagnosis and  
write a prescription- all on a hand-held, mobile computer the size of a clipboard (See  
PENNI CRABTREE, Page 1, Paragraph 1).

(K) As per claim 18, Bardy discloses means for developing a medical template, wherein said medical template comprises at least one medical protocol that is focused toward addressing a specific attribute of a medical ailment (See Bardy, Col.2, lines 10-55; Col.6, lines 14-25); and

means for customizing said medical template to develop said patient care plan (See Bardy, Col.10, lines 57-67 to Col.11, line 33).

Bardy does not explicitly disclose that the system having providing patient care to assist in improving health of said patient and

wherein said patient care plan is focused on addressing said medical ailment to improve the health of said patient.

However, these features are known in the art, as evidenced by PENNI CRABTREE. In particular, PENNI CRABTREE suggests that the method having providing patient care to assist in improving health of said patient, and

wherein said patient care plan is focused on addressing said medical ailment to improve the health of said patient (See PENNI CRABTREE, Page 1, Paragraphs 1-5).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have included the features of PENNI CRABTREE within the system of Bardy with the motivation of embracing a new computerized patient-record system that allows him to conduct a patient examination, chart an ailment, record a diagnosis and write a prescription- all on a hand-held, mobile computer the size of a clipboard (See PENNI CRABTREE, Page 1, Paragraph 1).

(L) Claims 11-17 and 19-26 recite the underlying process steps of the elements of claims 2-9 respectively. As per the various elements of claims 2-9 have been shown to be either disclosed by or obvious in view of the collective teachings of Bardy and PENNI CRABTREE, it is readily apparent that the system disclosed by the applied prior art performs the recited underlying functions. As such, the limitations recited in claims 11-17 and 19-26 are rejected for the same reasons given above for method claims 2-9, and incorporated herein.

### ***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The cited but not the applied art teaches methods and systems for providing medical data to a third party in accordance with configurable distribution parameters (2002/0016719), method and apparatus for an integrated clinical tele informatics system (6,139,494), system and method for managing medical records (5,772,585) and (Object and AMIS Develop Occupational Medicine Software by Business Editors/High –Tech & Medical Writers. Business Wire. New York: Jun 18, 1999, pg. 1).

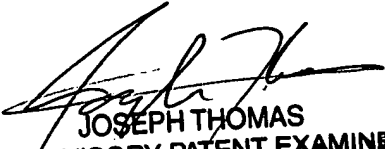
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vanel Frenel whose telephone number is 571-272-6769. The examiner can normally be reached on Monday-Thursday from 6:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas can be reached on 571-272-6776. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

V.F  
V.F

September 15, 2005

  
JOSEPH THOMAS  
SUPERVISORY PATENT EXAMINER